

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

JAMES SEMME FRAZIER, )  
Petitioner, )  
                        )  
-vs-                 )  
UNITED STATES OF AMERICA, ) Civil No. 04-1835  
Respondent.             ) Criminal No. 02-186

MEMORANDUM ORDER

CONTI, District Judge.

Pending before the court is petitioner's motion to vacate or set aside his judgment of conviction pursuant to 28 U.S.C. § 2255 (Doc. No. 129). Pursuant to 28 U.S.C. § 2255, a petitioner is entitled to a hearing when the files and records of the case fail to establish conclusively that a petitioner is not entitled to relief. See United States v. Booth, 432 F.3d 542 (3d Cir. 2005) ("The district court is required to hold an evidentiary hearing unless the motion and files and records of the case show conclusively that the movant is not entitled to relief.") (internal quotations omitted); Solis v. United States, 252 F.3d 289 (3d Cir. 2001).

Upon reviewing petitioner's motion, the government's response (Doc. No. 156), related filings and the record, the court determines that petitioner is entitled to an evidentiary hearing on his section 2255 motion. Accordingly, the court shall hold an evidentiary hearing and the court shall appoint an attorney to represent petitioner if petitioner qualifies to have counsel appointed under 18 U.S.C. § 3006A. See R. Governing § 2255 Cases R. 8(c) ("If an evidentiary hearing is

warranted, the judge must appoint an attorney to represent a moving party who qualifies to have counsel appointed. . . .") (emphasis added).

IT IS ORDERED that an evidentiary hearing shall be held at 9:30 a.m. on May 5, 2006.

By the court:

/s/ Joy Flowers Conti  
Joy Flowers Conti  
United States District Judge

Date: February 1, 2006

cc: James Semme Frazier  
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